

86 Ill. Adm. Code Section 130.2013 sets out the factors to be considered in determining whether a credit is available for the sale of an item of tangible personal property after it was leased by a person who is in the business of both selling and renting such property. (This is a GIL.)

May 17, 2002

Dear Xxxxx:

This letter is in response to your letter dated March 25, 2002 and the supplemental materials you provided on April 26, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

AAA is writing this letter to request a legal opinion on the credit given for Retailers Occupation Tax on the ST556 form.

AAA is in the business of leasing automobiles in all fifty states and the District of Columbia. The customer (lessee) leases the vehicle from a dealership and signs an AAA lease contract. The lessee pays all appropriate fees and taxes due at time of registration to the dealership. AAA purchases the contract from the dealer. The dealership registers the vehicle in the name of the owner, AAA, and the lessee. The dealership pays the Retailers Occupation Tax on the leased vehicle on a ST556 form using their IBT number. If the lessee purchases the leased vehicle, AAA collects the tax from the lessee and files a ST556 form using AAA's IBT number to pay the taxes on the purchase of the vehicle.

We would like a legal opinion on the following:

1. The dealer's IBT number was used to pay the taxes at time of initial registration of the vehicle at the beginning of the lease term. AAA's IBT number is used when the lessee pays the taxes on the purchase of the vehicle. Can the credit be applied to the tax on the purchase of the leased vehicle?
2. If a third party purchases the leased vehicle, not the original lessee, can the credit be applied towards the purchase of the vehicle?

3. If a customer decides not to purchase the vehicle, the vehicle is either purchased by a dealer or sent to auction. Can the credit follow the vehicle and be applied when the dealer sells or leases the vehicle to another individual?
4. Can AAA request a refund for Retailers Occupation tax previously paid? If so, what is the earliest date on the ST556 form we can request a refund for the tax paid. How will we receive this refund? What paperwork is required to file for a refund? Are we required to refund the customer before we receive a refund from the state?

Mr. Bates, thank you for researching this issue and we would appreciate it if you would give us a legal opinion on this issue. If you have any questions or concerns, please do not hesitate to write or call me .

In addition to the above letter you faxed a copy of an Illinois ST-556 that was executed at the inception of one of your lease transactions. Specifically, it shows the Illinois dealer selling the vehicle to you, in care of the lessee. Our responses to your questions are as follows:

1. The credit about which you have made inquiry is available to lessors who are required to pay Retailers' Occupation Tax when selling an item after having paid Use Tax on the purchase of the item for rental purposes. See 86 Ill. Adm. Code 130.2013, enclosed. A person who is engaged in the business of leasing or renting motor vehicles to others and who sells a motor vehicle that is no longer needed in his rental inventory to a user or consumer incurs a Retailers' Occupation Tax liability on that sale. The credit is available to a lessor of motor vehicles who incurs Retailers' Occupation Tax liability on sales so long as the lessor paid Use Tax to an Illinois retailer when the lessor purchased the particular motor vehicle being sold. Therefore if AAA as lessor paid Use Tax to an Illinois dealer when it purchased a motor vehicle that it leased and is now selling, whether the purchaser is the lessee or another person, the credit can be applied against the Retailers' Occupation Tax liability incurred on the sale. For motor vehicles, the credit is to be documented by a copy of the transaction reporting return filed by the Illinois dealer from whom the lessor purchased the motor vehicle. That transaction reporting return will show the amount of Use Tax that the lessor paid to the Illinois dealer. The credit is available only for the seller's Retailers' Occupation Tax liability incurred on the sale. The purchaser still owes Use Tax liability and the seller is required to collect this tax from the purchaser. For further information on this subject, see Illinois Department of Revenue Informational Bulletin FY 2002-22, which can be viewed or downloaded at the Department's Website.
2. See the answer to Question #1.
3. No. In the situation you set out there would be no Retailers' Occupation Tax liability on the sale because of the resale exemption. If a dealer or auctioneer purchases the car, such transaction is a sale for resale in which no Retailers' Occupation Tax liability is incurred by the lessor. The credit is only available on the leased vehicle when it is sold out of the lessor's inventory and the lessor as seller incurs a Retailers' Occupation Tax liability on the sale. See 86 Ill. Adm. Code 130.2013(h)(4).
4. If a lessor who is eligible for the credit explained in FY 2002-22 has already filed and paid tax on a transaction reporting return (ST-556) for the sale of the leased vehicle, the lessor may file a claim for credit on Form ST-556-X, Amended Sales Tax Transaction Return, so

that he can receive the benefit of the credit. This form and the instructions that explain its filing requirements are downloadable from the Department's Website at <http://www.revenue.state.il.us/Forms/sales.htm#auto>. As explained in the instructions, the statute of limitations for filing such a claim is from 3 to 3 ½ years.

I hope this information is helpful. The Department of Revenue maintains a Website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.